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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 28135										
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on <u>February 8, 2007</u></p> <p>Signature <u>Denise A. Rose</u></p> <p>Typed or printed name <u>Denise A. Rose</u></p>		Application Number <b>10/668,599</b>	Filed <b>09.24.2003</b>									
		First Named Inventor <b>Stacy J. Driskell</b>										
		Art Unit <b>3761</b>	Examiner <b>Michelle M. Kidwell</b>									
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table border="0"><tr><td><input type="checkbox"/> applicant/inventor.</td><td><u>William G. Gosz</u> Signature</td></tr><tr><td><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</td><td><u>William G. Gosz</u> Typed or printed name</td></tr><tr><td><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>27,787</u></td><td><u>(781) 863-1116</u> Telephone number</td></tr><tr><td><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</td><td><u>2/8/07</u> Date</td></tr></table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <table border="1"><tr><td><input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.</td></tr></table>				<input type="checkbox"/> applicant/inventor.	<u>William G. Gosz</u> Signature	<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	<u>William G. Gosz</u> Typed or printed name	<input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>27,787</u>	<u>(781) 863-1116</u> Telephone number	<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	<u>2/8/07</u> Date	<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.
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This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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## **REASONS FOR REVIEW REQUEST**

Sir:

This request is being filed for the purpose of a formal review of the legal and factual basis for the final rejection in the above-identified patent application.

### **Application Status:**

Claims 28-30 are currently pending in this application and have been finally rejected. Claims 1-27 and 31-66 have been canceled. Claim 28 is the sole independent claim remaining in the application, and all other pending claims (claims 29 and 30) ultimately depend from claim 28.

Claims 28-30 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the invention.

Claims 28-30 also stand rejected under 35 U.S.C. 102(b) as being anticipated by Timmons et al. (U.S. Patent No. 4,022,211).

No claims in the application have been allowed.

### **Issues:**

1. Whether claims 28-30 are indefinite.
2. Whether claims 28-30 are anticipated by Timmons et al.

### **Summary of Present Application:**

The pending claims of the present application are directed, in one embodiment, to a method of making an absorbent article by providing a top sheet, a back sheet and an absorbent core positioned between the top sheet and back sheet. A wetness indicator graphic is positioned between the back sheet and the absorbent core, while an unregistered character graphic is positioned in a waist portion of the article. The unregistered character graphic is applied to the waist portion of the article from a web having printed thereon repeated images. The wetness indicator graphic and unregistered character graphic are related to one another, but not interactively so.

Other embodiments of the invention recited in claims 29 and 30 are directed to details of cutting the web at certain predetermined intervals.

**Reference Disclosure:**

Timmons et al. is directed to wetness indicators for absorbent pad assemblies in which the pad assemblies have light-transmitting back sheets. The wetness indicators, depicted in one embodiment, are alphabet blocks with letters printed thereon with a coloring agent. The outline of the blocks is printed with a permanent ink which will not dissolve. However, the letters are printed with a water-soluble coloring agent which dissolves when wet. The disappearance of the letters is an indication that the article has been wet.

The Examiner contends that Timmons et al. discloses both the wetness indicator graphics and the unregistered character graphics of the present invention. Support for the presence of the unregistered character graphics is alleged to be found at col. 3, lines 41-56, and in FIGS. 5 and 6. This interpretation of the reference as applied to the unregistered character graphics is disputed by applicants as explained below.

**Summary of Arguments:**

Indefiniteness

Applicants are of the view that the claims are not indefinite since there is no ambiguity as to what is intended based on a fair and objective reading of the claims and specification. Although the Examiner contends that there is some ambiguity between claiming an unregistered character graphic and a character graphic, applicants do not agree with this interpretation of the claims. The term “character graphic” is used to refer to an image imprinted on a web which is, in turn, positioned in the waist portion of the article. This section of the claim clearly dealing with the use of a web refers to the unregistered character graphic which provides antecedent basis for the use of the term. The term “unregistered”, in the context of the invention, simply refers to the fact that the placement of the graphic on the article is not controlled. See, paragraph [0041], at pages 13 and 14 of the present specification. Applicants respectfully submit that the scope of

the claims is reasonably ascertainable by one skilled in the relevant art in accordance the provisions of 35 U.S.C. 112, second paragraph. See *Ex parte Porter*, 25 USPQ2d 1144, 1146 (B.P.A.I. 1992).

#### Anticipation

“Character graphics” are defined in the present specification as denoting graphics containing anthropomorphic images, and in particular images having or suggesting a human form or appearance which ascribes human motivations, characteristics or behavior to inanimate objects, animals, natural phenomena, cartoon characters, or the like. See paragraph [0033], page 11 of the specification.

Although the Examiner maintains that Timmons et al. discloses character graphics, this is not the case. FIGS. 1-4 of the reference show graphics in the form of broken zigzag and wavy lines. FIGS. 5 and 6 of the reference show graphics in the form of alphabet blocks. These graphics do not fall within the scope of the character graphics claimed in the present application. Accordingly, since the reference fails to disclose each and every element of the claimed invention, the claims cannot be anticipated by the reference. See *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987) (“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.”).

A review of this matter is respectfully requested on the basis of the facts and reasons noted above prior to the filing of an appeal brief.